IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 6360 of 2007(F)

PETITIONER:

P.S. JAYAPRAKASH, PUTHUPARAMBIL HOUSE,
NATTAKAM P.O., KOTTAYAM.

BY ADV. SRI.P.C.IYPE
SRI.GEORGE MECHERIL

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, PATHANAMTHITTA.

3. THE DISTRICT COLLECTOR, KOTTAYAM.

4. THE TAHSILDAR, THIRUVALLA.

5. THE TAHSILDAR (R.R.), KOTTAYAM.

6. THE COMMERCIAL TAX OFFICER-1,
THIRUVALLA.

7. V. UDYAKUMAR, YOOKAY AGENCIES,
MUTHOOR, THIRUVALLA.

8. UNION BANK OF INDIA, REPRESENTED BY ITS
GENERAL MANAGER, CENTRAL OFFICE-239,
VIDHAN BHAVAN, MARGH, NARIMAN POINT,
MUMBAI-400 021.

9. THE BRANCH MANAGER,
UNION BANK OF INDIA, THIRUVALLA.

R1 TO 6 BY G.P. SRI.C.K.GOVINDAN
R8&9 BY ADV. SRI.A.S.P.KURUP, SC, UBI
R7 BY DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF NOTICE ISSUED TO THE PETITIONER DT.31.1.2005.

P2: TRUE COPY OF PROCEEDINGS DT.25.8.2005 OF THE DY. COMMISSIONER, COMMERCIAL TAXES.

P3: TRUE COPY OF COMMUNICATION ISSUED TO THE TAHSILDAR KOTTAYAM BY R6 DT.30.8.2005.

P4: TRUE COPY OF LETTER DT.6.12.2006 OF R5 TO R6.

P5: TRUE COPY OF CERTIFICATE DT.8.2.2007 ISSUED BY R4.

P6: TRUE COPY OF THE TENDERS AS PER PUBLICATION DT.29.12.2006 IN MATHRUBHOOMI DAILY.

P7: TRUE COPY OF REPRESENTATION FILED BY THE PETITIONER BEFORE R2 AND COPY TO RESPONDENTS 3 TO 6 DURING FIRST WEEK OF FEBRUARY.

P8: TRUE COPY OF COMMUNICATION DT.1.2.2007 SENT BY R4 TO R8.

P9: TRUE COPY OF COMMUNICATION DT.14.2.2007 SENT BY R2 TO R8.

RESPONDENT'S EXHIBITS:

R9A: TRUE COPY OF NOTICE DT.NIL ISSUED BY R4 TO BANK.

R9B: TRUE COPY OF NOTICE DT.1.2.2007 ISSUED BY R4 TO BANK.

R9C: RUE COPY OF NOTICE DT.14.2.2007 ISSUED BY R2 TO BANK.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.6360 of 2007

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Dated this the 17th day of September, 2007.

JUDGMENT

The petitioner is challenging recovery proceedings initiated against him for recovery of arrears of sales tax due from 7th respondent. The petitioner admittedly offered 10 cents of his property towards security for granting sales tax registration to the 7th respondent. Obviously if arrears of tax is not paid by 7th respondent, petitioner's property can be sold as petitioner has created charge over the property for tax liability. The Government Pleader reported that arrears of tax is around Rs.28 lakhs with further interest thereon. Even though counsel for the 7th respondent submitted that he has filed appeals against assessment and demand of tax, it is not known whether stay is granted by the appellate authority or by court. If stay is not there, recovery can be continued against 7th respondent and against the property of the petitioner. However, since 7th respondent has stated in court that he will clear the arrears of tax, W.P. is disposed of directing him to pay 25% of the tax arrears within one month from now if appeals are pending and if not, full arrears within one month from now. If payment is not made as above, the arrears could be recovered from 7th

respondent, failing which property of the petitioner can be proceeded against. If petitioner has a case that 7th respondent has sufficient properties, petitioner will identify the properties of 7th respondent for sale by the recovery authority. If the said property is subject to charge to the Bank, the sale consideration after adjustment of tax arrears will be paid to the Bank. There will be direction to the appellate authority to dispose of all pending appeals of the 7th respondent within three months from the date of making payment of 25% of disputed tax by 7th respondent.

I make it clear that recovery against the petitioner should be limited to the bond amount and against the secured property.

C.N.RAMACHANDRAN NAIR
Judge

pms